

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

LARRY L. REINHART,

Appellant,

v.

WASHINGTON STATE LIQUOR CONTROL
BOARD,

Respondent.

)
) Case No. DISM-97-0025
)

) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD
)

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Member. The hearing was held in the Liquor Control Board Enforcement Office in Bellingham, Washington, on May 11 and 12, 1999. NATHAN S. FORD JR., Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Larry L. Reinhart was present and was represented by Robert D. Butler, Attorney at Law. Respondent Washington State Liquor Control Board was represented by Neil R. Martinson and Stewart A. Johnston, Assistant Attorneys General.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of dismissal for neglect of duty, inefficiency, gross misconduct and willful violation of published employing agency or department of personnel rules or regulations. Respondent alleges that Appellant completed and submitted a falsified Personnel Action Request form requesting the resignation of another employee.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Girod v. Dep't of Social & Health Services, PAB No. D91-003 (1991), appeal dismissed, Thurston Co. Super. Ct. No. 91-2-02922-6 (1993); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant Larry L. Reinhart was a Liquor Store Manager 1 and a permanent employee for Respondent Washington State Liquor Control Board at the Blaine Liquor Store #140 located in Blaine, Washington. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on April 28, 1997.

2.2 By letter dated April 23, 1997, Respondent dismissed Appellant from his position effective May 9, 1997. The letter charged Appellant with neglect of duty, inefficiency, gross misconduct and willful violation of published employing agency or department of personnel rules or regulations. Respondent alleged that Appellant submitted a falsified Personnel Action Request (PAR) form requesting the resignation of Pat Thurier, Assistant Manager of Liquor Store #123 located in Bellingham, Washington. The falsified PAR was mailed using a postpaid Liquor Control Board envelope. (Exh. R-1).

2.3 Lori LeMay is a District Manager for the Washington State Liquor Control Board. Both Liquor Store #140, where Appellant was employed, and Liquor Store #123, where Ms. Thurier was employed, are within Ms. LeMay's District. On September 27, 1996, Ms. LeMay received a

1 Personnel Action Request form in the mail. (Ex. R-7, Att. A.). The form was mailed in a
2 Washington State Liquor Control Board postpaid envelope with a return address of the State Liquor
3 Store located at 181 Telegraph Road in Bellingham, Washington. (Ex. R-7, Att. B).

4
5 2.4 The PAR requested the resignation of Pat Thurier and gave the reason for her resignation as
6 “Jack Leander promised me that if I said certain things I would become manager.” The form was
7 signed with the name Pat Thurier (sic) and was dated 9/25/96.

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9 2.5 Ms. LeMay was surprised to receive the form because she had no idea that Ms. Thurier was
10 planning to resign. Before signing the form, Ms. LeMay called her supervisor, Mike Donaldson,
11 and apprised him of the form and its contents. Mr. Donaldson instructed Ms. LeMay to sign the
12 form and forward it to him.

13
14 2.6 Mike Donaldson was the Director of Products Sales and Service and was the appointing
15 authority. Both Appellant and Ms. Thurier were under Mr. Donaldson’s chain of command.
16 Because Mr. Donaldson was the appointing authority, all PAR forms came to him for signature
17 before being processed by personnel.

18
19 2.7 The Liquor Control Board Store’s Policy Manual states: “Do not delay submitting a PAR to
20 obtain an employee signature except for a resignation, retirement or voluntary demotion. The
21 employee initiating those requests must sign the form.” (Ex. R-6).

22
23 2.8 After talking with Ms. LeMay, Mr. Donaldson telephoned Ms. Thurier. Ms. Thurier had no
24 knowledge of the form, had not signed the form and became upset when she learned about it. Mr.

1 Donaldson assured Ms. Thurier that he would take no action to process the PAR form. Ms. Thurier
2 asked for a copy of the form, so Mr. Donaldson instructed Ms. LeMay to provide her with a copy.

3
4 2.9 Subsequently, Ms. LeMay met with Ms. Thurier and provided her with a copy of the form.
5 In addition, she obtained a sample of Ms. Thurier's signature.

6
7 2.10 After meeting with Ms. Thurier, Ms. LeMay reported back to Mr. Donaldson and informed
8 him that Ms. Thurier believed that Appellant had created the form. Mr. Donaldson informed the
9 Chair of the Liquor Control Board and Human Resources staff of the situation. In addition, Mr.
10 Donaldson contacted Laurel Lewellen, Distribution Center Security and Loss Prevention
11 Supervisor, informed her of the situation, and asked for her assistance.

12
13 2.11 Ms. Lewellen conducted an investigation to determine the origin of the PAR form. She
14 forwarded the PAR form and the envelope in which it was delivered to Robert G. Floberg, Forensic
15 Handwriting Examiner. In addition, Mr. Floberg was provided known writing samples of
16 Appellant, Pat Thurier, and another employee suspected of submitting the PAR form.

17
18 2.12 Mr. Floberg determined that the handprinting on the PAR form and on the envelope was
19 consistent with the known handprinting of Appellant. Mr. Floberg determined that the cursive,
20 signed name of Pat Thurier (sic) on the form was forged, but he was unable to form a conclusive
21 opinion as to who forged the signature. However, he did state that the forged signature was
22 consistent with the ink and line quality of the printing formed by Appellant. (Ex. R-2-E).

23
24 2.13 After receiving Mr. Floberg's report, Mr. Donaldson advised the Chair of the Liquor
25 Control Board of the results of the report and they discussed getting a second opinion. Mr.

1 Donaldson contacted Ms. Lewellen and she arranged for a second handwriting expert to review the
2 documents.

3
4 2.14 Joseph M. Upton, Handwriting Examiner, conducted the second examination of the
5 documents. Mr. Upton determined that Appellant was the sole author of the handprinting on the
6 PAR form and on the envelope. He determined that the signed name of Pat Thurier was a forgery,
7 but he was not able to determine who had signed it. (Ex. R-2-F).

8
9 2.15 After reviewing Mr. Upton's report, Mr. Donaldson felt he had enough information to
10 proceed with a pre-termination hearing for Appellant. He scheduled the pre-termination hearing for
11 February 13, 1997. Appellant denied any involvement in the falsified PAR form, however,
12 Appellant's union representative said that the PAR form was the result of a practical joke. At
13 Appellant's request, Mr. Donaldson agreed to interview employees of the Blaine Liquor Store. In
14 addition, the union representative indicated that they would hire a third document examiner and Mr.
15 Donaldson said that he would provide the documents to the third examiner when the union
16 representative notified him of the identity of the third examiner. The union did not hire a third
17 examiner.

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19 2.16 Laurel Lewellen conducted interviews with Appellant's subordinate employees. She
20 provided summaries of her interviews to Mr. Donaldson. (Ex. R-10). This information was
21 provided to Appellant and a continuation of the pre-termination hearing was scheduled for March
22 25, 1997. During the March 25, 1997 hearing, Appellant's union representative stated his opinion
23 that the PAR form was insignificant because it had no impact and that the situation was the result of
24 a secret agenda against Appellant and was in retaliation for a whistle blower report.

1 2.17 Mr. Donaldson considered all the information available and concluded that Appellant had
2 created and authored the falsified PAR form and the envelope in which it was mailed. Mr.
3 Donaldson determined that by submitting a falsified PAR form, Appellant failed to fulfill his
4 obligations as a supervisor, failed to properly use agency resources, caused the agency to expend
5 time and money in investigating the source of the falsified form, and violated agency policy and
6 procedure. In addition, Mr. Donaldson felt that Appellant's actions were flagrant, malicious, and
7 done with the intent of harassing Ms. Thurier. Appellant never accepted any responsibility for his
8 actions and Mr. Donaldson concluded that in spite of Appellant's history of good operational
9 performance, Appellant had violated the trust the agency puts in its store managers and failed to
10 meet the agency's expectations for integrity, ethical behavior and reliability. As a result, Mr.
11 Donaldson determined that dismissal was the appropriate sanction.

12 13 **III. ARGUMENTS OF THE PARTIES**

14 3.1 Respondent argues that the agency underwent a thorough, complete investigation and pre-
15 termination process before deciding to dismiss Appellant. Respondent argues that while both
16 handwriting experts were unable to determine who signed the PAR, they both agreed that Appellant
17 completed the hand printed portion of the form and the envelope. Respondent asserts that Appellant
18 more likely than not signed the forged signature. Respondent further asserts that Appellant
19 completed and submitted the falsified PAR with the intent of causing harm to Ms. Thurier.
20 Respondent contends that Appellant's dismissal was not retaliatory but was in response to
21 Appellant's malicious, intentional misconduct and his serious breach of the trust that the agency had
22 placed in him as a store manager. Respondent maintains that dismissal is the appropriate sanction.

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24 3.2 Appellant asserts that the investigation and pre-termination process were flawed as
25 evidenced by the two hearings. Appellant contends that the agency was retaliating against him as a
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1 result of a whistle blower complaint and made a rushed decision based on incomplete information.
2 Appellant contends that an unsigned PAR would not have been processed and that there is no proof
3 that he signed the form. Furthermore, Appellant contends that Ms. Thurier was not harmed by the
4 falsified form because no action was taken to process the resignation. Appellant also contends that
5 in instances of more egregious misconduct, Respondent has not terminated the guilty employees but
6 that here, Appellant was targeted and treated differently. Appellant asserts that while he may
7 deserve to be disciplined for his participation in printing the PAR form, which was known to be a
8 joke, he does not deserve to be terminated. Appellant contends that Respondent failed to meet its
9 burden of proof and failed to meet its internal standard for discipline. Appellant maintains that his
10 dismissal should be modified to a lesser sanction.

11 12 **IV. CONCLUSIONS OF LAW**

13 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
14 herein.

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16 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
17 the charges upon which the action was initiated by proving by a preponderance of the credible
18 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
19 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
20 Corrections, PAB No. D82-084 (1983).

21
22 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
23 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
24 of Social & Health Services, PAB No. D86-119 (1987).

1 4.4 Respondent has met its burden of proof that Appellant neglected his duty when he falsified a
2 PAR form requesting the resignation of another employee. In addition, Appellant completed the
3 envelope in which the falsified form was mailed. Appellant's actions show an intent to submit the
4 falsified form for processing and an intent to cause harm or, at a minimum, inconvenience to Ms.
5 Thurier. Appellant has a duty to abide by agency policies and procedures and perform his
6 responsibilities in a professional and ethical manner. His use of an official agency document and
7 envelope to submit falsified information pertaining to another employee is clearly a neglect of duty.

8
9 4.5 Inefficiency is the utilization of time and resources in an unproductive manner. Girod v.
10 Dep't of Social & Health Services, PAB No. D91-003 (1991), appeal dismissed, Thurston Co.
11 Super. Ct. No. 91-2-02922-6 (1993).

12
13 4.6 Respondent has failed to meet its burden of proof that Appellant's actions constituted
14 inefficiency. Respondent has not shown that Appellant completed the PAR form or the envelope
15 during time when he should have been performing work. Furthermore, any time taken to complete
16 the form and envelope would have been *de minimis*. Respondent has also failed to show that the
17 money and time the agency chose to expend to investigate the falsified form constituted inefficiency
18 on Appellant's part.

19
20 4.7 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
21 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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23 4.8 Respondent has met its burden of proof that Appellant's actions constituted gross
24 misconduct. Appellant intentionally completed and submitted the falsified form which caused
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1 undue distress and concern for a fellow employee. Appellant's action was flagrant and malicious
2 and adversely affected Ms. Thurier and adversely affected the agency.

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4 4.9 Willful violation of published employing agency or institution or Personnel Resources
5 Board rules or regulations is established by facts showing the existence and publication of the rules
6 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
7 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &
8 Health Services, PAB No. D93-053 (1994).

9
10 4.10 Respondent has met its burden of proof that Appellant violated agency policies and
11 procedures. As a store manager, Appellant was aware of agency policies and procedures, knew the
12 purpose and proper use of the PAR form and knew that agency resources were to be used for
13 business purposes. Appellant violated agency policy when he engaged in misconduct and used state
14 property against Ms. Thurier for his personal use. He also violated policies and procedures when he
15 knowingly falsified official agency documents for non-work-related purposes.

16
17 4.11 In determining whether a sanction imposed is appropriate, consideration must be given to
18 the facts and circumstances including the seriousness and circumstances of the offense. The penalty
19 should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent
20 recurrence, to deter others from similar misconduct, and to maintain the integrity of the program.
21 An action does not necessarily fail if one charge is not sustained unless the entire action depends on
22 the unproven charge. Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

23
24 4.12 Respondent has shown by a preponderance of the credible evidence that Appellant signed
25 Ms. Thurier's name to the PAR form. However, regardless of whether he signed the form,

1 Appellant's actions warrant dismissal. Appellant intentionally falsified the PAR form and
2 submitted it for processing. Appellant knowingly engaged in inappropriate actions and used agency
3 resources for personal reasons. Appellant falsified official documents which could have caused
4 great harm and inconvenience to another employee. Such malicious, intentional misconduct should
5 not be tolerated. Under the proven facts and the totality of the circumstances in this case,
6 Appellant's appeal should be denied.

7
8 **V. ORDER**

9 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Larry L. Reinhart is denied.

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11 DATED this _____ day of _____ 1999.

12 WASHINGTON STATE PERSONNEL APPEALS BOARD

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14 _____
Walter T. Hubbard, Chair

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16 _____
Gerald L. Morgen, Member

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